IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO. 1149/2005

DR. KAILASH CHAND SHARMA Vs. SMT. SUNITA SHARMA

DATE: 30.05.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. Hari Barath for the petitioner.
Mr. Prem Kumar Sharma for the respondent.

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The instant criminal revision petition under Section 397 r/w Section 401 Cr.P.C. is preferred by the petitioner-husband against the judgment dated 02.07.2005 passed by the Family Court No.1, Jaipur in Criminal Case No. 213/2002, whereby the application filed by the respondent-wife under Section 125 Cr.P.C. has been allowed and maintenance to the tune of Rs. 3,000/- per month has been granted in favour of the respondent from the date of filing of the application i.e. 20.06.2002.

The main challenge to the impugned judgment dated 02.07.2005 is on the ground that as per the provisions of Section 125 of the Code of Criminal Procedure, the total amount which can be awarded in favour of any applicant is only upto Rs. 2,500/- and

that too is only after recent amendment in the amount of maintenance. Earlier the maximum limit was Rs. 500/- and now at present it is Rs. 2,500/-, thus, in any case the Family Court is not empowered to award the maintenance amount beyond the limit prescribed under the law. Therefore, awarding Rs. 3,000/- in favour of the respondent-wife as maintenance by the Family Court is totally improper exercise of power vested in it.

The second challenge to the impugned judgment is that the payment of maintenance should be awarded from the date of passing of the order and not from the date of filing of the application.

Per contra, learned counsel Mr. Sharma appearing on behalf of the respondent-wife contended that amendment is made in the Cr.P.C. and as per the amendment of Section 125 of the Code of Criminal Procedure in sub-section (1) the words “not exceeding five hundred rupees in the whole” is omitted and this amendment is came into force w.e.f. 24th September, 2001 and thus, there is no maximum limit so far as granting maintenance under Section 125 Cr.P.C. is concerned as per the Amended Act, 2001.

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It is not disputed by the respondent that the State has made amendment in the rules which came into force w.e.f. 1st May, 2001 and it is also not disputed that as per the State amendment maximum limit is Rs. 2,500/-, but the amendment in the Code of Criminal Procedure is made effective from 24th September, 2001 i.e. after the amendment of the State, therefore, this amendment is as per the settled proposition of law as laid down by the Hon'ble Supreme Court in the case of **Deep Chand Vs. State of U.P, AIR 1959 SC 648,** wherein the Hon'ble Supreme Court has held that “Assuming that Parliament in the present case by enacting the Amending Act repugnant to the State law with respect to the same subject matter, i.e., nationalization of road transport, impliedly repealed the State law. Section 6 of the General Clauses Act saves the scheme framed under the U.P. Act; a scheme framed is a thing done under the repealed Act within S. 6 of the General Clauses Act.”

Here in the instant case after the amendment made by the State w.e.f. 1st May, 2001, Central amendment came into force w.e.f. 24th September, 2001 and as per the ratio the amendment made through Amended Act, 2001 repealed the State law. Thus, the

objection raised by the learned counsel Mr. Barath, appearing for the petitioner-husband that the Family Court has exceeded its jurisdiction granting maintenance in favour of the respondent-wife to the tune of Rs. 3,000/- per month is not proper.

The second contention raised on behalf of the petitioner that the maintenance order should be made effective from the date of passing of the judgment and not from the date of filing of the application, although there is a contrary view also and the Family Court can grant maintenance from the date of filing of the application under Section 125 Cr.P.C., but in the interest of justice, I deem it proper to accept the request made by the learned counsel for the petitioner and modify the impugned judgment dated 02.07.2005 passed by the Family Court No.1, Jaipur to the extent that the maintenance which has been granted by the Family Court in favour of the respondent-wife shall be made effective from the date of passing of the impugned judgment i.e. 02.07.2005 and not from the date of filing of the application i.e. 20.06.2002. However, so far as challenge to the amount of maintenance as awarded by the Family Court is concerned, the revision petition, as observed herein

above, fails and the same is dismissed. No interference whatsoever is required by this Court.

Accordingly, with the aforesaid modification in the impugned judgment dated 02.07.2005 passed by the Family Court No.1, Jaipur, the revision petition stands partly allowed as indicated herein above.

(K.S. RATHORE),J.

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